

PARLIAMENT OF CEYLON

4th Session 1955-56



Income Tax (Amendment) Act, No. 3 of 1956

Date of Assent : February 2, 1956

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L. D.—O. 44/55.

AN ACT TO AMEND THE INCOME TAX ORDINANCE.

[Date of Assent: February 2, 1956]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Income Tax (Amendment) Act, No. 3 of 1956. Short title.

2. Section 2 of the Income Tax Ordinance (hereinafter referred to as the "principal enactment"), as amended by Ordinance No. 22 of 1940, is hereby further amended in the definition of "dividend" as follows:— Amendment of section 2 of Chapter 188.

(1) by the omission of all the words from "and also the paid-up value" to "profits of the company;";

(2) in paragraph (a) of that definition by the omission of the word "and";

(3) in paragraph (b) of that definition by the substitution, for the word "thirty-one;", of the words "thirty-one, and";

and

(4) by the addition, immediately after paragraph (b) of that definition, of the following new paragraph:—

"(c) the paid-up value of any shares distributed by a company to its shareholders to the extent to which such paid-up value represents the capitalization of the whole or any part of the profits of the company;".

3. Section 6 of the principal enactment is hereby amended, in paragraph (a) of sub-section (2) of that section, as follows:— Amendment of section 6 of enactment.

(1) in sub-paragraph (i) of that paragraph by the substitution, for all the words from "except" to the end of that sub-paragraph, of the following:—

"the value of any free conveyance granted by an employer to any employee, any allowance so granted for the purchase of any conveyance, the value of any

holiday warrant or passage of a director of a company or corporation who holds either directly or through nominees more than $7\frac{1}{2}$ per centum of the total issued shares of that company or corporation, and the value of any holiday warrant or passage granted to any such director in respect of his wife, son or daughter, except the value of any holiday warrant or passage triennially granted to any such director who is not a citizen of Ceylon in order to enable him to visit his home abroad, and the value of any holiday warrant or passage not specified in this sub-paragraph;”.

- (2) in sub-paragraph (ii) of that paragraph by the substitution, for the words “any sum received in commutation of pension, or”, of the following:—

“any retiring gratuity, any sum received in commutation of pension, any sum paid from a provident fund approved by the Commissioner to an employee at the time of his retirement other than such part of that sum as represents his contributions to that fund made after April 1, 1954,”; and

- (3) in sub-paragraph (v) of that paragraph by the substitution, for the word “otherwise;”, of the following:—

“otherwise, and such part of any allowance paid by a company or corporation to a director or other executive officer of that company or corporation for the purpose of entertainment, travelling, subsistence or other expenses as is not expended for that purpose;”.

Amendment of
section 7 of
the principal
enactment.

4. Section 7 of the principal enactment, as amended by Act No. 30 of 1950, is hereby further amended, in sub-section (1) of that section, as follows:—

- (1) in paragraph (k) of that sub-section, by the omission of the following:—

“retiring gratuity (other than a sum received in commutation of pension) or”; and

- (2) in paragraph (n) of that sub-section by the substitution, for the word "Ordinance:", of the words "Ordinance other than the profits and income of such society from the business of a printer, publisher, transporter or distiller:".

5. Section 7B of the principal enactment is hereby amended, in sub-section (1) of that section, as follows:—

Amendment of section 7B of the principal enactment.

- (1) by the substitution, for all the words from "This section" to "fulfilled:—", of the following:—

"This section shall apply—

- (i) to any industrial undertaking in respect of which the Commissioner is satisfied that the following conditions are fulfilled:—";
- (2) in sub-paragraph (d) of that sub-section by the substitution, for the word "undertaking." of the words "undertaking; and"; and
- (3) by the insertion, immediately after paragraph (i) of that sub-section, of the following paragraph:—
- "(ii) to any undertaking of deep sea fishing."

6. Section 9 of the principal enactment, as amended by Act No. 28 of 1954, is hereby further amended, in sub-section (1) of that section, as follows:—

Amendment of section 9 of the principal enactment.

- (1) in paragraph (ccc) of that sub-section by the addition, at the end of that paragraph, of the following:—

"Provided further that for the year of assessment commencing on the first day of April, 1955, and for any of the three immediately succeeding years of assessment—

- (a) the preceding sub-paragraph (i) of this paragraph shall have effect as if for the expression '15 per centum' occurring in that sub-paragraph there were substituted the expression '25 per centum', and

(b) the preceding sub-paragraph (iii) of this paragraph shall have effect as if for the expression '10 per centum' occurring in that sub-paragraph there were substituted the expression '15 per centum'; and

(2) by the substitution, for paragraph (g) of that sub-section, of the following paragraph:—

“(g) any contribution to a pensions fund, any contribution by an employer to a savings or provident society or fund, which may be approved by the Commissioner subject to such conditions as he may prescribe.”.

Amendment of section 10 of the principal enactment.

7. Section 10 of the principal enactment is hereby amended as follows:—

(a) by the insertion, immediately after paragraph (d) of that section, of the following paragraph:—

“(dd) expenses incurred in connection with any employment other than such expenses not exceeding three hundred rupees in any year as are incurred by a professionally or technically qualified employee in the payment of subscription to a professional or technical society of which he is a member or in the purchase of professional or technical books, journals or reports;” and

(b) in paragraph (g) of that section by the substitution, for the word “surtax,” of the following:—

“surtax (other than the excess of any such United Kingdom income tax, or super tax, or surtax over such maximum amount of the credit in respect of Ceylon income tax as is allowed by sub-section (4) of section 2 of the Double Taxation (Relief) Act, No. 26 of 1950).”.

Amendment of section 13 of the principal enactment.

8. Section 13 of the principal enactment is hereby amended as follows:—

(1) in sub-section (1) of that section, by the substitution, in paragraph (c) of that sub-section, for

all the words from "the amount of a loss" to "prior year:", of the following:—

"where the year of assessment commences on or before the first day of April, 1956, the amount of a loss incurred by him in any trade, business, profession or vocation during any of the three immediately preceding years of assessment which, if it had been a profit, would have been assessable under this Ordinance, and which has not been allowed against his statutory income of a prior year, and, where the year of assessment commences on or after the first day of April, 1957, the amount of a similar loss incurred by him during any preceding year of assessment commencing on or after the first day of April, 1954, which has not been so allowed:";

- (2) by the insertion, immediately after sub-section (1A) of that section, of the following new sub-section:—

"(1B) Where at any time within the three years of assessment immediately succeeding any year of assessment commencing on or after the first day of April, 1955, any person ceases to carry on any trade, business, profession, vocation or employment, he shall be entitled to a deduction from the statutory income for that year of assessment of the amount of a loss incurred by him in that trade, business, profession, vocation or employment in any of those three years which, if it had been a profit, would have been assessable under this Ordinance, and which has not been allowed against his statutory income of any year. For the purpose of allowing that deduction, the assessable income of that person for that year of assessment shall, notwithstanding the provision of section 75, be revised. A claim of a deduction under this sub-section shall be regarded as an appeal for the purposes of Chapter XI:

Provided that—

- (i) in no circumstances shall the aggregate deduction from statutory income in respect of any loss exceed the amount of such loss;

(ii) a deduction under this sub-section shall be made as far as possible from the statutory income of the first year of assessment preceding that in which the loss was incurred, and, so far as it cannot be so made, from the statutory income of the next preceding year of assessment, and so on; and

(iii) where the person is a company entitled to a deduction under this sub-section from the company's statutory income of any year of assessment and the company has paid out of such statutory income dividends to any shareholders of the company, the amount of such deduction shall be reduced by the gross amount of such dividends." ; and

(3) in sub-section (2) of that section by the substitution, for the expression "sub-section (1) (b), and (c)", of the expression "sub-section (1) (b) and (c) and sub-section (1B),":

Amendment of
section 16 of
the principal
enactment.

9. Section 16 of the principal enactment is hereby amended, in sub-section (1) of that section, as follows:—

(1) in paragraph (d) of that sub-section—

(a) by the substitution, for the words "under the age of twenty-two years", of the words "under the age of twenty-five years", and

(b) by the substitution, for the words "educational establishment," of the words "educational establishment, or as an apprentice or a learner in any trade, business, profession, vocation or employment," ; and

(2) in paragraph (e) of that sub-section by the substitution, for all the words from "each individual" to "his wife:", of the following:—

"each such relative of his or of his wife as, throughout the year preceding the year of assessment, either lived with

him and was maintained by him or was maintained by him in any sanatorium, asylum or educational establishment:”.

10. Section 20 of the principal enactment is hereby amended as follows:—

Amendment of
section 20 of
the principal
enactment.

(1) by the insertion, immediately after sub-section (2A) of that section, of the following new sub-section:—

“(2B) Where, by virtue of any resolution under section 20A, for any year of assessment commencing on or after the first day of April, 1955,—

(a) either no tax is chargeable in respect of the income of an individual resident in Ceylon, or

(b) the tax chargeable upon his taxable income is less than one per centum of his assessable income if his assessable income does not exceed six thousand rupees, or is less than two per centum of his assessable income if his assessable income exceeds six thousand rupees,

then tax shall be charged for such year of assessment upon his assessable income at the rate of one per centum if his assessable income does not exceed six thousand rupees and at the rate of two per centum if his assessable income exceeds six thousand rupees, so, however, that if the assessable income exceeds six thousand rupees, the tax chargeable shall not be more than the aggregate of—

(i) the amount by which the assessable income exceeds six thousand rupees, and

(ii) an amount equal to one per centum of six thousand rupees.”;

(2) in sub-section (10) of that section, as amended by Act No. 11 of 1955, by the omission of all the words from “Provided, further, that where the sum” to the end of that sub-section; and

- (3) by the insertion, immediately after sub-section (10) of that section, of the following new sub-section:—

“(10A) Where, in consequence of the inclusion in the statutory income of an individual of—

(a) a sum received in commutation of pension, or

(b) a sum refunded under section 38 (1) or section 39 of the Widows' and Orphans' Pension Fund Ordinance or under any regulation relating to any Widows' and Orphans' Pension Fund or Scheme established for the Local Government Service which corresponds to the said section 38 (1) or section 39, or

(c) a sum received as a retiring gratuity, or

(d) a sum paid to him, at the time of his retirement from any employment, from a provident fund approved by the Commissioner other than such part of that sum as represents his contributions to that provident fund made after April 1, 1954,

his taxable income for any year of assessment commencing on or after the first day of April, 1955, exceeds that which would be his taxable income if no such afore-mentioned sum were included in his statutory income, the excess, notwithstanding anything contained in any other sub-section, shall, if he was liable to tax in the three immediately preceding years of assessment, be chargeable with tax at the average of the effective rates at which he was liable to tax in those three years, or, if he was liable to tax for only two of those three years, be chargeable with tax at the average of the effective rates at which he was liable to tax

in those two years, or, if he was liable to tax for only one of those three years, be chargeable with tax at the effective rate at which he was liable to tax in that year:

Provided that, where he was non-resident in any of the three immediately preceding years of assessment referred to in the preceding provisions of this sub-section, the rate at which the aforesaid excess is chargeable with tax shall be determined by the Commissioner, so, however, that the amount payable by him as tax on such excess shall not be more than that which would be payable if he had been resident:

Provided further that, where the excess referred to in the preceding provisions of this sub-section is in consequence of the inclusion in the statutory income of such sum as is referred to in paragraph (d) of those provisions and tax has already been paid in respect of that sum or any part thereof, the amount of the tax chargeable under those provisions on such excess shall be reduced by the amount of the tax already paid and, if the amount of the tax already paid is more than the tax so chargeable on such excess, no tax shall be so chargeable on such excess.

For the purposes of this sub-section, the effective rate of tax for any year of assessment shall be the percentage which the amount of tax payable for that year, without any deduction for any relief under sections 43, 44, 44A, 44B, 45 (1) and 46, bears to the amount of the assessable income for that year."

11. Section 21 of the principal enactment is hereby amended as follows:—

Amendment of
section 21 of
the principal
enactment.

(1) in sub-section (2) of that section by the substitution, for the word "separation.", of the words "separation, or if the husband and wife are in fact separated in such circumstances that the separation is likely to be permanent."; and

(2) by the addition, at the end of that section, of the following new sub-section :—

“(3) Where under sub-section (2) a marriage is not deemed to subsist, the allowance under paragraph (d) of sub-section (1) of section 16 in respect of any child shall,—

(a) if the spouses are living apart under the decree of a competent court or a duly executed deed of separation and the cost of maintaining that child is required by that decree or deed to be borne wholly by one spouse, be granted to that spouse,

(b) if that child is a step-child of one spouse, be granted to the other spouse,

(c) if that child is a child authorised by an adoption order made under the Adoption of Children Ordinance, No. 24 of 1941, to be adopted by one spouse, be granted to that spouse, and, if that child is a child authorised by such an adoption order to be adopted by the two spouses jointly, be apportioned equally to the two spouses, and

(d) in any other case, be apportioned equally to the two spouses.”.

Amendment of section 22 of the principal enactment.

12. Section 22 of the principal enactment is hereby amended, in sub-section (1) of that section, by the substitution, for the words “any year of assessment”, of the words “any year of assessment, or at any time before an assessment is made in any year of assessment,”.

Amendment of section 34 of the principal enactment.

13. Section 34 of the principal enactment is hereby amended, in sub-section (1) of that section, by the addition, at the end of that sub-section, of the following proviso :—

“Provided that, where the property sold or disposed of is produced or manufactured by such non-resident person outside Ceylon, the profits from the sale or disposal shall,—

(a) if the sale or disposal was by wholesale, be deemed to be not more than the profits which might reasonably be expected to be made by a merchant selling the property by whole-sale, and

- (b) if the sale or disposal was by retail, be deemed to be not more than the profits which might reasonably be expected to be made by a merchant selling the property by retail. ”.

Amendment of section 44A of the principal enactment.

14. (1) Section 44A of the principal enactment is hereby amended by the repeal of sub-section (1) and the substitution therefor of the following new sub-section :—

(1) In this section, “ approved donation ” means a donation not less in amount than one thousand rupees—

(a) made in money or otherwise to the Government of Ceylon, or

(b) made in money to any such public charitable trust or institution as is declared by the Minister by notice published in the *Gazette* to be an approved charity for the purposes of this section.

For the purposes of this section, the amount of a donation made to the Government of Ceylon otherwise than in money shall be the value of such donation, and such value shall—

(a) be the actual cost to the donor of the property donated, and

(b) where the actual cost cannot be ascertained, be the market value of the property donated.

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed to have come into force on the first day of April, 1953.

15. The following new heading and new section are hereby inserted immediately after section 44A, and the new section shall have effect as section 44B, of the principal enactment :—

Insertion of new heading and new section 44B in the principal enactment.

“ JJJ—Premia on Life Insurance Policies, and Provident Fund Contributions of Employees.

Relief from tax in respect of premia on life insurance policies and provident fund contributions of employees.

44B. (1) Where a person—

(a) during the year preceding any year of assessment commencing on or after April 1, 1955, pays any premia on a life insurance policy, or

(b) during any period of employment the profits from which are included in the total statutory income of any year of assessment commencing on or after April 1, 1955, makes any contributions to a provident fund approved by the Commissioner,

he shall be entitled to a deduction from the tax payable in respect of that year of assessment of an amount equal to the tax calculated at the effective rate on the amount of such premia or, as the case may be, on the amount of such contributions :

Provided, however, that such effective rate shall not exceed fifteen per centum, and the amount on which tax is calculated at such effective rate shall not exceed one-sixth of his assessable income for such year of assessment or four thousand rupees, whichever amount is less.

(2) Where under section 21 (1) the assessable income of a wife for any year of assessment is deemed to be part of the assessable income of her husband, any premia on a life insurance policy paid by her shall, for the purposes of the preceding provisions of this section, be deemed to be premia paid by her husband.

(3) For the purposes of this section, the effective rate of tax shall be determined as provided in sub-section (10A) of section 20. ”.

Amendment of
section 45 of
the principal
enactment.

16. Section 45 of the principal enactment is hereby amended, in sub-section (2) of that section, by the substitution, for the words “ shall be entitled to relief ”, of the words “ or who is a resident of any country which grants to residents of Ceylon in respect of any income tax levied in that country relief similar to that allowed by this sub-section, shall be entitled to relief ”.

17. Section 52 of the principal enactment is hereby amended as follows:—

Amendment of
section 52 of
the principal
enactment.

(1) by the renumbering of sub-section (1A) of that section as sub-section (1F);

(2) by the insertion, immediately after sub-section (1) of that section, of the following new sub-sections:—

“ (1A) Where, in the case of a company controlled by not more than five persons,—

(a) the assessable income of the company for any year of assessment is computed on the profits of the company for any year ending on or after the first day of April, nineteen hundred and fifty-five (hereafter in this sub-section referred to as the “ previous year ”), and

(b) the Assessor is satisfied that, in respect of the previous year, the company has not distributed to its shareholders a reasonable part of its profits,

the Assessor may, subject to the provisions of sub-sections (1B), (1C), (1D), and (1E), treat the whole or a part of the profits of the company, after deducting therefrom any expenditure incurred for the development of the business of the company other than the price paid for the purchase of an existing business or an agricultural undertaking, as distributed in the form of dividends to the shareholders of the company; and the persons concerned shall be assessable accordingly.

(1B) In determining under sub-section (1A) whether a company has not distributed to its shareholders a reasonable part of its profits, the Assessor shall have regard not only to the current requirements of the company's business but also to such other requirements as may be necessary or advisable for the maintenance and development of that business.

(1C) For the purposes of sub-section (1A), any of the following sums shall be regarded as profits available for distribution among the shareholders of the company and not as having been applied or being applicable to the requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business:—

(a) any sum expended or applied, or intended to be expended or applied, out of the profits of the company—

- (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character acquired by the company, or
- (ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor, or
- (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property, or
- (iv) in redemption or repayment of any share or loan capital or debt

(including any premium on such share or loan capital or debt) issued or incurred otherwise than for adequate consideration,

(b) any sum lent to a director or shareholder of the company, and

(c) any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transactions.

(11) For the purposes of sub-section (1C), share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—

(a) it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon), or

(b) it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as is mentioned in paragraph (a) of this sub-section or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration,

and references in this sub-section and in sub-section (1C) to money applied or to be applied for any purpose shall be deemed to include references to money applied or to be applied in or towards the replacement of that money.

(1E) No action under sub-section (1A) shall be taken by an Assessor in the case of any company referred to in that sub-section until the expiration of a period of not less

than three months after the date on which the accounts of the company for the year referred to as the previous year in that sub-section have been laid before the company in general meeting, and, where one of the shareholders of any such company is another company, any amount treated under sub-section (1A) as having been distributed in the form of dividends to such other company shall, for the purpose of the application of sub-section (1A) to such other company, be deemed to be profits of such other company and to have been part of the assessable income of such other company.

(3) in the re-numbered sub-section (1F) of that section by the substitution, for the expression "sub-section (1)", of the expression "the preceding provisions of this section"; and

(4) in sub-section (4) of that section by the substitution, for paragraph (b) of that sub-section, of the following new paragraphs:—

(b) "company controlled by not more than five persons" means a company in which more than half of the total shares issued is held by not more than five persons, their wives or minor children, either directly or through nominees.

Insertion of
new section
75A in the
principal
enactment.

18. The following new section is hereby inserted in Chapter XI of the principal enactment immediately after section 75, and shall have effect as section 75A, of that enactment:—

"Penalty for
incorrect
return.

75A. (1) Where in an assessment made in respect of any person the amount of income assessed exceeds that specified as his income in his return and the assessment is final and conclusive under section 75, the Commissioner may, unless that person proves to the satisfaction of the Commissioner that there is no fraud or wilful neglect involved in the disclosure of income made by that person in his return, in writing order that person to pay as a penalty for making an incorrect return a sum not exceeding two thousand rupees and a sum equal to twice the tax on the amount of the excess.

(2) Any person in respect of whom an order is made under sub-section (1) may, within twenty-one days after the notification of the order to him, appeal therefrom in writing to the Board of Review. The appeal shall state the grounds of objection to the order.

(3) The provisions of section 73 shall as far as possible apply to the hearing and disposal of any appeal under the preceding provisions of this section. The Board of Review may confirm, reduce, increase or annul the penalty imposed by the order of the Commissioner from which an appeal is made, but any increase of such penalty shall not be in excess of the maximum amount which the Commissioner may impose under sub-section (1) as such penalty.

(4) Where in respect of any person's return of income a penalty is imposed on that person under this section, he shall not be liable to a prosecution for an offence relating to that return under paragraph (a) of sub-section (2) of section 85 or under paragraph (a) of sub-section (1) of section 87."

19. Section 84 of the principal enactment is hereby amended by the addition, at the end of that section, of the following new sub-section:—

Amendment of
section 84 of
the principal
enactment.

" (3) Where it is proved to the satisfaction of the Commissioner by claim made in writing within three years of the end of a year of assessment that any person has paid tax in excess of the amount with which he was properly chargeable for that year of assessment and that the excess is due to any error in the assessment or the return of the income of that person other than an error in the application or construction of any provision of this Ordinance in the making or revision of the assessment, such person shall be entitled to have refunded the amount so paid in excess."

Amendment of
section 87 of
the principal
enactment.

20. Section 87 of the principal enactment is hereby amended, in sub-section (1) of that section, as follows:—

(a) by the substitution, for all the words from “ Any person ” to “ evade tax—”, of the following:—

“ Any person who—”; and

(b) by the substitution, for the words “ shall be guilty ”, of the words “ and thereby evades tax or assists any other person to evade tax shall be guilty ”.